IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.73 OF 2006

IN

SUIT NO.3092 OF 2003

...

Sanjay Agarwal, Prop. of
M/s.Yamini Creations ...Plaintiffs

v/s.

M/s.Jakhadi & Sons & Anr. ...Defendants

...

Mr.Sanjay Gawade i/b J.P.Dubey for the Plaintiff.
Ms.V.V.Thorat for the Defendants.

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CORAM: D.K.DESHMUKH, J.

DATED: 19TH JUNE, 2006

P.C.:

1. Though the Defendants have not filed any reply, from the plaint it appears that the Plaintiff has approached the court with a contradictory case. According to averments in paragraphs 1 & 2 of the plaint, Defendant No.2 Ramesh Jakhadi is the proprietor of the Defendant No.1 firm by name M/s.Jakhadi & Sons. According to averments in the plaint, the Defendant No.2 Ramesh approached the Plaintiff for supply of the goods.

2. The learned Counsel appearing for the Plaintiff stated before me that the delivery receipts have been signed by one Ajay Jakhadi. The name of the Defendant No.2 is Ramesh Jakhadi. Thus, the delivery challan is not signed by the Defendant No.2. Demand notice that was issued by the Plaintiff states that the proprietor of the Defendant No.1/firm is not Ramesh Jakhadi the Defendant No.2, but somebody else i.e. Ajay Jakhadi. Though the demand notice is issued to Ajay, he is not joined as a party to the suit. In paragraph 6 of the plaint, however, the

Plaintiff says that the demand notice was served on the Defendant, though the Defendant No.2 was not served with demand notice. Defendant No.1 is a proprietary concern. It has no existence independent of Defendant No.2.

3. It is thus clear that the Plaintiff himself is not sure about his case. Therefore, it will be hazardous to pass a decree in favour of the Plaintiff in a summary jurisdiction. Summons for judgment is, therefore, disposed of. Unconditional leave is granted to the Defendants to defend the suit. Suit be transferred to commercial cause list. Suit to be transferred to commercial cause list. Written statement to be filed within eight weeks from today.

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